

APPROPRIATE ROLE OF THE CONTRACTOR SUPPORTING THE GOVERNMENT

RECOMMENDATIONS

Tom Luedtke

Working Group Chair

August 29, 2006



Recommendation 1

(Revised 8/29/06)

- OFPP should update the principles for Agencies to apply in determining which functions must be done by Civil Servants.

[Adopted 8-29]



Recommendation 2 (Revised 8/29/06)

- Agencies must then ensure that those functions are adequately staffed with Civil Servants.

[Adopted 8-29]



Recommendation 3

(ADOPTED 8/10)

- In order to reduce artificial restrictions and maximize effective and efficient service, Congress should remove the current statutory prohibitions on Personal Services.
 - Within the scope of these types of contracts, the Government should be allowed to direct a service contractor's workforce on the substance of the work and/or task performed.
 - Prohibitions on Government involvement in supervisory activities (e.g. hiring, approval of leave, promotion or performance ratings, etc.) should remain in place.

Updated 8/10/2006



Recommendation 4

ADOPTED 8/10

- Consistent with Congressional action, OFPP should provide specific policy guidance which defines where, to what extent, under which circumstances, and how agencies may procure personal services.
- Within 5 years of adoption of this policy, the GAO should study the impact resulting from this change.



Recommendation 5

- The FAR Council should review existing rules and regulations, and to the extent necessary, create new, uniform, government-wide policy and clauses dealing with Organizational Conflicts of Interest, Personal Conflicts of Interest, and Protection of Contractor Confidential/Proprietary Data, as described in more detail in the following sub-recommendations.

[Adopted 8-29-06]



Recommendation 5-1

- Organizational Conflicts of Interest (OCIs)
 - Consider development of a standard OCI Clause, or a set of standard clauses if appropriate, for inclusion in solicitations and contracts that set forth the contractor's responsibility to assure that its employees, and those of its subcontractors, partners, and any other affiliated organization or individual in the instant effort, as well as policies prescribing their use. The policy and clauses should address conflicts that can arise in the context of developing requirements and/or statements of work, the selection process and contract administration. Potential conflicts of interest to be addressed may arise from such factors as financial interests, unfair competitive advantage, and impaired objectivity (on the instant or any other action), among others.

[Adopted 8-29-06]



Recommendation 5-2

- Personal Conflicts of Interest (PCIs)
 - The FAR Council should determine when PCIs need to be addressed, and whether greater disclosure, specific prohibitions, or reliance on specified principles will accomplish the end objective of ethical behavior.
 - The FAR Council should consider whether development of a standard ethics clause, or a set of standard clauses would be appropriate for inclusion in solicitations and contracts that set forth the contractor's responsibility to perform the contract with a high level of integrity, along the lines of the Defense Industry Initiative.
 - [Adopted 8-29-06]



Recommendation 5-3

- With respect to OCIs and PCIs:
 - Analysis of existing statutes and regulations to determine if they provide sufficient tools to deter or appropriately hold contractors accountable for violations of both types of conflicts of interest or whether additional tools are needed. If additional tools are needed, the FAR Council should determine if Congress needs to provide additional authorities.
 - [Withdrawn from recommendations by Working Group]



Recommendation 5-4 deleted 8-29-06

- Protection of Contractor Confidential/Proprietary Data
 - Analysis to determine if existing tools (e.g. nondisclosure agreements and remedies for inappropriate disclosure) are sufficient to protect against the release or improper use of contractor confidential/proprietary information, and whether additional tools are needed. If additional tools are needed the FAR Council should develop them, with appropriate guidance on when and how to use them.



Recommendation 5-4 Revised

- Protection of Contractor Confidential/Proprietary Data
 - The FAR Council should provide additional regulatory guidance for contractor access and for protection of contractor and third party proprietary information, including clauses for use in solicitations and contracts regarding the use of non-disclosure agreements, sharing of information among contractors, and remedies for improper disclosure.

[Adopted 8-29-06]



Recommendation 5-5

- Training
 - FAR Council should work with DAU/FAI to develop and provide training to:
 - Help procurement personnel identify potential OCIs and PCIs, techniques for addressing them and remedies to use should either occur.
 - Train procurement personnel and others on how to appropriately apply additional tools for the protection of confidential data.

[Adopted 8-29-06]



Recommendation 7

- OFPP should conduct a review to determine what additional requirements, if needed, be levied on contractors, their employees, subcontractors and other associates in order to provide adequate assurance that government contractors will perform the government's business in an ethical manner.
- [withdrawn by Working Group 8-29-06]



Recommendation 7-1

- As the goal is ethical conduct not technical compliance with a multitude of specific and in some cases confusing rules and regulations, the Federal Government's rules and regulations in their entirety should not be imposed in contractors.

[Adopted as independent recommendation 8-29-06]



Recommendation 7-2

- Development of a uniform set of principles that contractors would be expected to live up to and for which the contractors would be held accountable. Where existing standards of conduct, codes of ethics, etc. achieve the principles of the Federal Government's ethics systems, such rules should be acceptable and the contractor organizations should be held accountable for enforcing them.
- [withdrawn by Working Group 8-29-06]



Recommendation 7-3

- In order to ensure that the Federal Government and the public receive services performed in an ethical manner, the ethical requirements must flow through the contract to all parties (at whatever level) that are engaged in performing the work. In order to ensure the integrity of the acquisition process, all participants including bidders (successful or not) must also be held to these principles.
- [withdrawn by Working Group 8-29-06]



Recommendation 7-4

- Since contractor employees will be working with Civil Servants on a daily basis, and because Civil Servant ethics rules are not all self-evident, consideration should be given to a requirement that would make receipt of the agency's annual ethics training (same as given to Civil Servants) mandatory for all service contractors operating in the blended workforce environment.
- [Adopted 8-29-06]



Recommendation 7-5

- Consideration should be given to allowing Federal Government employees to attend ethics training of their service contractors that participate in the blended workforce; in order to understand the contractor's ethics rules and how they support the principles of the Federal Government's ethics program.
- [withdrawn by Working Group 8-29-06]



Recommendation 8

- Enforcement
 - In order to reinforce the standards of ethical conduct applicable to contractors, including those addressed to contractor personnel in a blended workforce, and to ensure that ethical contractors are not forced to compete with unethical organizations, agencies shall ensure that existing remedies, procedures, and sanctions are fully utilized against violators of these ethical standards.
 - [Adopted 8-29-06]

